

FILED

NOV 30 2005

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

E-Filing

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF
AMERICA,

Plaintiff,

v.

DANIEL BARNES

No. CR 04-0317-2 MHP

ORDER STAYING
DRUG/ALCOHOL TESTING AND
WARRANTLESS SEARCH
REQUIREMENTS IN PRETRIAL
RELEASE CONDITIONS

IT IS HEREBY ORDERED, in light of the recent decision by the Court of Appeals for the Ninth Circuit in *United States v. Scott*, 424 F.3d 888 (9th Cir. September 9, 2005), that the provisions of any order (including any pretrial bond) previously entered by any judge of this court that subjected a defendant whose case has not been resolved (by trial, motion, or change of plea) to random tests for substance abuse (drugs or alcohol) and/or to warrantless searches are STAYED.

Defendants who have been convicted (by guilty plea or trial) and who are awaiting sentence or self-surrender remain subject to *all* release conditions previously imposed, including random testing for substance abuse and/or warrantless searches.

Substance abuse treatment programs and half-way houses (e.g., Cornell Corrections) fix the terms and conditions under which persons may be admitted to

1 and remain in their programs. These programs may expel or terminate any person
2 who refuses to comply with or who violates the terms and conditions set by the
3 programs. If a defendant who was ordered by the court, as a condition of pretrial
4 release, to participate in a substance abuse program or to reside in a half-way house,
5 is terminated or expelled from the program, it will be necessary for the court to
6 reconsider whether that defendant may remain out of custody (on a changed set of
7 conditions) pending the disposition of the criminal proceedings.

8 Persons who signed bonds as SURETIES and/or who agreed to serve as
9 CUSTODIANS for a defendant who was subjected, under the terms of the bond, to
10 substance abuse testing and/or warrantless searches, are hereby NOTIFIED THAT
11 THE TERMS OF THE BOND HAVE BEEN CHANGED as reflected above.

12 IT IS FURTHER ORDERED that the Pretrial Services Office shall mail a copy
13 of this ORDER AND NOTICE to all sureties and/or custodians on bonds whose
14 provisions for substance abuse testing and/or warrantless searches are stayed by this
15 ORDER.

16
17 IT IS SO ORDERED.

18 Dated: 11 - 30 - 05

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20 
Honorable Maria Elena James
United States Magistrate Judge

21 Copies to: Pretrial, U.S. Attorney,
22 Defense Counsel.

23 file: order and notice re changing release conditions
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